IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/04/2004

CORAM

THE HON'BLE MR. JUSTICE K.P. SIVASUBRAMANIAM

WRIT PETITION No. 17651 of 1994
And
C.R.P.No. 151 of 2002

W.P.No.17651 of 1994.

1. R.Varadarajan

2. D.Vevarajan

3. G.Gangadevi

4. R.Balasubramani. .. Petitioners.

-Vs-

1. The Director of Town and
Country Planning,
Anna Salai,
Madras - 600 002,

2. The Commissioner,
Corporation of Coimbatore,
Coimbatore.

3. The Secretary,
Coimbatore Taluk Co-operative
Housing Society Ltd. (South),
Sowripalayam Colony,
Coimbatore.

4. K. Haridas
5. S. Ganesan
6. G. Rajendran
(RR 4 to 6 impleaded as
per order dated 5.8.2002
in WMP No.2304 of 1995) .. Respondents

C.R.P.No.151 of 2002

1. R.Varadarajan
2. D.Devarajan
3. R.Balasubramani
4. G.Gangadevi .. Petitioners.

/versus/
1. S. Bhanumathi

2. K.Haridas

3. G.R.G.Chandra Gandhi Nagar

4. S.Ganesan

5. G.Rajendran

6. Dr.Narayanaswamy

7. K.S.Rajasekaran

8. P.Jagannathan

9. Venugopal

10. Subburam

11. Ranganathan

12. Venugopal

13. The Secretary,
Coimbatore South Taluk
Co-op. Housing Society Ltd.,
41, Tatabad, 2nd Street,

14. The Commissioner,
Coimbatore Municipal Corporation,
Coimbatore. .. Respondents.

!For petitioners: Mr. M. Venkatachalapathy
(both in WP & CRP) Senior Counsel
for M/s. M. Sriram and D. Rajendran

For respondents: Ms. V. Velumani for R1 & R3 in WP
and for R13 in CRP
Mr. R. Sivakumar for R2 in WP and
R14 in CRP
Mr. S. Sundar
for Mr. T.R. Rajaraman
for R2, R4 and R5

:ORDER

Sowripalayam Rural Co-operative Housing Society formed a Housing Colony Scheme at Coimbatore known as G.R.G. Chandragandhi Nagar. The lay out was approved by all the concerned authorities and the Society sold the plots to its members as house sites. The lay out thus approved, contain certain areas which had been earmarked for common usage which cannot be converted into different user without the approval of the local body and planning authorities. A portion of the lay out was earmarked as Children's play ground. The controversy in these proceedings relate to the conversion of the said site into housing sites. The writ petitioners are the individuals who have purchased the said four housing sites. They are aggrieved by the non ratification of the change of user of the plots which were purchased by them. Hence, they have prayed for the issue of a writ of mandamus to direct respondents 1 to 3 to ratify the change of user of the plots allotted to the petitioners by the Society and conveyed to them under Sale deeds dated 17.5.1987. Subsequent to the filing of the writ petition, some of the original allottees who are objecting to the change of the user and the purchase of the land/house sites by the writ petitioners, have been impleaded as respondents 4 to 6. The Housing Society which originally formed the Housing Colony, after completion of the project had become non-functional and merged with Coimbatore Taluk Cooperative Housing Society Ltd., which has been impleaded as the third respondent in the writ petition.

2. For convenience, the writ petitioners will be described as petitioners and respondents 4 to 6 as objectors.

3. In the affidavit filed in support of the writ petition, the petitioners contend that the plots reserved for a particular purpose could be converted or altered for a different purpose by a resolution of the Society. According to them the sanction of the original lay out plan was obtained in 1986 and that the Society by resolution dated 17 .5.1987 resolved to convert the lands reserved for play ground as house sites and allotted them to the members at the then market rate value. They also contend that there was sufficient alternate place available in the Northern portion of the lay out for being used as play ground. There are no schools in the area and hence the need for a play ground will not arise. On the other hand, the open space was only becoming a nuisuance and used by antisocial elements. The Society after effecting conveyance duly informed the Director of Town and Country Planning and the Commissioner of the Corporation. The petitioners having purchased the property were exercising their right of ownership by fencing the plot. As a result of the attitude of the objectors and the execution of certain gift deeds by individuals who have no right over the property, gifting the property to the Municipal Corporation, the petitioners were constrained to move the Civil Court and the Civil Court was seized of the matter. However, in view of the fact that the third respondent who is the successor in interest of the Vendor Society had a legal duty to safeguard the interest of the petitioners, they were constrained to move this Court.

4. In the counter filed by the second respondent/Corporation, the Commissioner has pleaded that the petitioners have simultaneously filed

the petition before the other forum, the Deputy Registrar of Cooperative Societies for the same relief. The petitioners cannot call themselves as members of the Society and the alleged resolution by the Society for change of user was also denied. The land shown as open area cannot be converted into a housing site. In terms of the provisions of the Coimbatore City Municipal Corporation Act, 1981, ten per cent of the lay out area have to be kept as open space for public purpose. The approved lay out plan cannot be interfered with. The erstwhile Society did not move any application regarding the change of user or conveyance in favour of the petitioners. No such application has been received by the respondents. As regards the gift deeds the petitioners have already moved the Registrar questioning the execution of the gift deeds. The conveyance deed alleged to have been executed in favour of the petitioners are not binding on the Corporation.

5. The fourth respondent has filed a counter on behalf of himself and respondents 5 and 6. According to them, they are the original members of the Society having purchased the plots from the Society and in all the sale deeds in their favour, the lay out plan is appended. Approval of the lay out plan thus was subjected to various conditions, one of the conditions being that there cannot be any change in the measurements and the areas earmarked for any common use. The use of the plots can be only in accordance with the sanction.

6. It is further stated that the Society without getting the prior approval or permission converted the reserved site meant for play ground into four plots and had sold the four sites to the petitioners. The petitioners filed O.S.No.263 of 1991 on the file of the District Munsif, Coimbatore, for a permanent injunction and the said suit was ultimately dismissed. The decree was also c onfirmed by the Appellate Court. Another suit in O.S.No.1739 of 1994 was also filed by the petitioners questioning the transfer of the land earmarked for common use to the City Municipal Corporation as invalid. The said suit was also dismissed.

7. The Society has executed sale deeds in respect of 58 house sites to the members of the Society over which pucca houses have been constructed in 38 plots and were used by the owners as residential houses. The disputes were referred by the petitioners to the arbitrator and even though the Deputy Registrar had negatived the contentions of the members of the Society, the District Court had allowed the appeals filed by the members of the Society holding the relevant the issues in their favour by holding that the conversion of play ground was not valid, as detailed below. Therefore, the issue having been decided by the appropriate forum, this writ petition was liable to be dismissed.

8. Proceedings were taken before the Deputy Registrar of Cooperative Societies by the petitioners under the following circumstances:

As a result of the Society not having taken any steps to transfer the playground to the local authority, the objectors and other members of the colony appear to have formed an Association called "CRG Chandragandhi Nagar Narpani Manram", hereinafter called "Narpani Manram" and

had executed gift deed on 25.6.199 gifting the playground/common area (A schedule) to the City Municipal Corporation. This resulted in disputes being raised before the Deputy Registrar. The third respondent/Society filed A.R.C.No.198/94-95 to declare the gift deed as null and void. The writ petitioners filed A.R.C.No.199/94-95 to set aside the gift deed. A.R.C.No.200/94-95 was filed by the writ petitioners for direction to the Society to obtain approval and change of lay out plan in terms of the sale deed dated 27.5.1997, to approve the said sales and to hold that the petitioners are entitled to the same benefits as the other members of the Society. They also contended that the common area under dispute (A schedule) has already been converted into house sites by a valid resolution of the Society and sale deeds dated 27.5.1987 have also been executed and hence, cannot now be treated as a common area. There was an alternate common site in the lay out which could be used as playground (B schedule) and there was no illegality in the conversion of the play ground or the sale of the house sites to them.

9. All these claims were answered by the Deputy Registrar in favour of the petitioners/writ petitioners and the Society. The grounds which found acceptance with the Deputy Registrar and the conclusions arrived at by him are as follows:-

(i)The sale in favour of the petitioners on 27.5.1987 by the Society was valid and as the sale consideration has been received by the Society, the sale was binding on the Society.
(ii)There was another alternate open space and there was possibility of the Society replacing the open space for play ground. Therefore, since the Society had converted the disputed open space by a valid resolution, the Society was duty bond to take steps to convert the lay out plan from open space to house sites in favour of the petitioners.
(iii)Bylaw Nos.33(2) and 38(3) enables the Society itself to convert the user of the common area.
(iv)The failure to obtain permission from the authorities was only due to administrative reasons and therefore, there was nothing wrong with the non-compliance of the said requirement.
(v)The other members are not in any manner affected by such noncompliance.
(vi)The objections by the objectors to convert the common area into house sites and their objections relating to the suggestion for using the alternate open space as play ground were unreasonable.
(vii)The Corporation has not yet declared A schedule area as a common area.
(viii)The gift by Narpani Manram in favour of the Corporation was invalid as they had no power to do so.
(ix)Till the authorities pass orders approving the conversion, the petitioners shall not convert the user.
(x)The objectors shall also refrain from interfering with the possession of the petitioners of 'A' schedule area.

10. On the basis of the above said reasonings, all the claims raised by the petitioners were answered in their favour. It was however, made clear that till local authorities grant approval for the conversion of A schedule, the petitioners shall not convert the user.

11. Aggrieved by the said decision, C.M.A.Nos.152 and 153 of 1995 and 14 of 1996 were filed before the Principal District Judge, Coimbatore. C.M.A.No.152 of 1995 was filed by the Narpani Manram against the decision in A.R.C.No.198/94-95. C.M.A.No.153/95 was filed by the objectors against the decision in A.R.C.No.199/94-95. C.M.A.No.14 of 1996 was filed by the Commissioner of Coimbatore Municipal Corporation against the decision in A.R.C.No.198/94-95.

12. The learned District Judge after hearing the appeals, by a common order, dismissed C.M.A.No.152/95 and C.M.A.No.14 of 1996. C.M.A.No.153 of 1995 was allowed thus setting aside the order of the Deputy Registrar in A.R.C.No.199/94-95 dated 8.3.1995. The learned District Judge held as follows:-

(i)The disputes raised before the Deputy Registrar were maintainable under Section 90 of the Co-operative Societies Act.

(ii)But as far as A.R.C.No.199/94-95 was concerned, the said dispute was not maintainable as there was no dispute between the members (petitioners) and the Society, nor any dispute touching the constitution of the Board/Management, or the business of the Society.

(iii)Even assuming that the petition was maintainable, on merits also A.R.C.No.199/94 was liable to be dismissed.

(iv)The Narpani Manram has no rights over the property and hence the gift of A schedule property to the Corporation was void. Though the members of the colony (objectors) may be aggrieved by the action of the Society converting the user of the play ground, they cannot take law into their own hands. Hence gift was invalid.

(v)The resolution passed by the Society dated 26.4.1987 to convert the playground as house sites not having been approved by the competent authorities, cannot be given effect to. No approval has been granted by the Director of Town and Country Planning either to convert the reserved the site or to shift the playground to B schedule. In the B schedule a high tension electrical line was passing and there was also a transformer. The Society cannot convert the reserved site to the detriment of the other members of the Society and depriving their enjoyment of the playground.

(vi)The members cannot be compelled to ask their children to play in a prohibited area (B schedule) where there was a Transformer as well as High Tension power line.

(vii)The Deputy Registrar of Co-operative Societies has no power to grant any relief in the said context, nor any power to grant injunction more so as in this case, where the Society and the writ petitioners have blantantly violated the Rules with immunity and had converted the reserved site of playground and sold the same to the petitioners. Therefore, the conversion of the site and the conveyance of the same to the petitioners were all invalid.

13. Aggrieved by the decision of the learned District Judge in C.M.A.No.153 of 1995 (A.R.C.No.199/94-95) dated 12.11.2001, the petitioners had preferred C.R.P.No.151 of 2002 under Article 227 of the Constitution of India.

14. Mr.M.Venkatachalapathy, learned Senior Counsel appearing

for the writ petitioners/revision petitioners/purchasers of the four house sites, raised the following contentions:-
The requirement to reserve an open space for common use though mandatory is within the choice of the Society. If the Society is able to identify an alternate site and seeks for the approval of its decision, the Town Planning Authorities (T.P. Authorities) have no choice to refuse the same. The lay out plan once approved does not become unalterable. If the amendment/alteration, which is sought for is reasonable and does not violate the basic requirements of a valid lay out plan, then the T.P. Authorities have a duty to apply their mind and pass orders on the request of the Society for alteration. It is not the stand of the authorities or even the objectors that the T.P. Authorities can never amend or alter the lay out plan once it is approved. The respondents cannot also contend that the Society cannot seek for such an amendment. Learned Senior Counsel further contends that the Society on an overall consideration of t he need of the Colony felt that the area allotted for playground was being misused by unsocial elements and that there was an alternate site/open space which could be used as a playground. After due discussion, the society has passed the resolution to the said effect on 26.4.1987. It is therefore, quiet within the power of the Society to have resolved so and it is not for a group of self serving individuals to go against the decision of the Society. The T.P. Authorities also have to look into the issue in an objective manner and it is not as though the original plan cannot be modified at all. The very fact that approval can be sought for by amending the plan presupposes and implies that the original plan can be suitably modified in terms of the desire of the majority of the Society/Colony people. The only discretion of the authorities is to see whether the basic requirements are satisfied while giving effect to the modification. Therefore, the petitioners were entitled to the relief sought for in the writ petition.

15. As regards the impugned order in the C.R.P., learned Senior Counsel contends that the findings rendered by the District Judge were unsustainable. The learned District Judge did not find the Resolution of the Society dated 26.4.1987 in any manner bad in law or on facts. It is true that the sales have been effected in favour of the petitioners even before the approval by the T.P. Authorities. The defect if any was only technical and the entire transaction cannot be termed as high-handed or illegal as held by the learned District Judge. The defect will be automatically cured when once the approval is granted. Approval is bound to be granted by the authorities in the performance of their statutory duties and the mere fact that the sales were effected even before the approval cannot result in vitiating the entire proceedings, inclusive of the resolution dated 26.4.1987. It is pertinent to note that the said resolution has not been set aside in any manner known to law. Therefore, the findings of the learned District Judge are liable to be set aside.

16. Mr.Sundar, appearing for the contesting party respondents/ objectors, contends that the entire action of the petitioners is in collusion with the then office bearers of the Society and was highly irregular and high-handed as held by the learned District Judge. The fact that the T.P. Authorities have the power to grant approval for any modification of the lay out plan does not

mean that the Office-bearers of the Society could seek to alter the plan according to their will and pleasure without the consent of the residents and to their detriment. The General Body of the residents were never taken into confidence by giving notice to all the members/residents before the Society passed its resolution on 26.4.1987. Hence the resolution was totally void and inoperative. No relief can be granted on the basis of such invalid resolution. The resolution appears to have been passed in a hurried manner at the instance of the beneficiaries. After the alleged resolution, there was no advertisement or notice to all the members, nor were the plots brought in auction in which all members who had no house sites or intending to purchase a site could have taken part which would have also secured higher consideration, even assuming that conversion was permissible. The resolution and the sales in favour of the four individuals were pre-determined and have been carried in a secretive manner only to favour the four petitioners.

17. The resolution cannot prevent the individual members to question the legality, or the propriety of the decision thus taken to convert the place earmarked for common usage into house sites. The contention that the playground was being used by unsocial elements was absolutely false and there has never been any such complaint. It is only in those circumstances, the aggrieved residents have formed an association (Narpani Mandram), and had sought to transfer the common area to the Municipal Corporation, an action which should have been carried out by the Society itself. Learned Counsel also drew my attention the provisions of the Coimbatore City Municipal Corporation Act, the Bylaws of the Society and the planning regulations which require that for conversion of the common areas, prior permission and sanction has to be obtained from the Registrar and the T.P. Authorities. Such permission was admittedly not obtained from the authorities. Learned counsel also refuted the possibility of using alternate site (BSchedule) as play ground as suggested by the petitioners. He contended that not only the location, but also the situation of High-Tension power line and a Transformer in the said site rendered the said site absolutely dangerous and unsuitable for the children or any member of the public and to be used as a playground.

18. I have considered the submissions of both sides. Some of the admitted facts in this case alone are sufficient to deny the relief to the petitioners.

19. The admitted facts are that the resolution of the General Body to convert the use of the land earmarked as playground in the lay out into house sites was not approved either by the Registrar or by the T.P. Authorities either prior to such alienation or even subsequently. It is also not disputed that the conversion cannot be given effect to without the approval by the authorities. In fact prior permission is a condition precedent. The criticism that the General Body itself was not convened properly and the meeting itself was convened in a secretive manner only to favour the petitioners without any advertisement or general information appears to be correct. It is not even necessary to go into the said issue considering the admitted facts themselves which are sufficient to deal with the issues arising for consideration in these proceedings.

20. The basic requirement of open space/play ground/parks in the newly developing Colonies and housing scheme in public interest, is not an issue which requires to be explained. Lack of space and dense population in our country may act as negative factors for not being able to achieve the high level of environmental ambience of residential areas in western countries of large roads, pavements, separate marginal roads for two wheelers, etc. But the minimum which is required in public interest is some open space in every colony which would not only act as the lungs of the Colony, but also a must for young and old to spend their time and energy usefully. Such areas are necessary not only for reducing the congestion in the area, but also for the benefit of the physical and mental health of the residents especially the children and youth. That is the reason why there is statutory recognition for such a requirement to leave out a specified portion of the Colony as open space as a pre-condition for sanctioning the lay out plan. Having obtained the sanction of lay out plan by representing to the Corporation and the T.P. Authorities by earmarking and showing a portion of the lay out as playground/park, it would be totally illegal and against the public interest to go behind the said representation on the basis of which sanction had been obtained. The members of the Society/the purchasers of the plots who invest their money exercise their choice, and invest their hard earned money on the expectation that the Colony will continue to retain for ever the said common facilities and features as found in the lay out plan. There is therefore, a legitimate expectation in them. But in our country such expectations are often betrayed and the places which are earmarked for common use are converted high-handedly to the benefit of and the self-interest of persons with money and power. This is precisely what has happened in this case.

21. Before sanctioning the lay out, the applicant has to fulfill all the requirements, conditions in the Development Control Rules and the lay out plan will be sanctioned only on setting apart specific land for common use. Such land shall ever remain only for the benefit of the entire Colony.

22. Reliance placed by learned Senior Counsel for the respondents on the judgment of S.M.Ali Mohamed,J. in M.R.GOPALA KRISHNA v. THE SPECIAL OFFICER, TIRUCHY CORPORATION & OTHERS (1996 I M.L.J.,108) is not appropriate considering the facts of the present case. That was a case in which the question which arose for consideration was as to whether the open space left for School/Park etc., would vest with the Municipality or Corporation.

23. Per contra, in SHEIT RAM DEAD BY L.RS. v. MUNICIPAL CORPORATION OF DELHI (1995 I S.C.C., 47), the Supreme Court held that reserving any of the site for street, open space, park, school, etc., in the lay out plan was for public purpose and it shall be used only by the public. The effect of such reservation is that the owner ceases to be the legal owner of the land and he owns the land only for the benefit of the public in general. The Supreme Court further held that it would create an obligation in the nature of a Trust which would preclude the owner from transferring or selling the interest in the property. I had an occasion to follow the said judgment in KRISHNA NAGAR RESIDENTS' WELFARE ASSOCIATION v. DIRECTOR OF TOWN

AND COUNTRY PLANNING (2001 (3) L.W., 828). In that case, there was an attempt to convert the area earmarked for park into a community hall under the exclusive control of an individual and it was held that the attempt to convert the property as belonging to a private individual was not permissible. Therefore, the law laid down by the Supreme Court is that common places as earmarked in the plan has to remain only common.

24. It follows that, in this case, the Society which is the owner of the property, cannot use the property contrary to the sanctioned lay out plan much less alienate the property in favour of private individuals for any use contrary to the lay out plan. In this case, the Society had indulged in such an illegal action and hence requires to be deprecated. Even the prayer that the authorities should approve the resolution cannot be entertained as the resolution is per se illegal.

25. It would also relevant to refer to the provisions of the Tamil Nadu Parks, Play-fields and Open space (Preservation and Regulation) Act, 1959 which has been enacted in the interest of and maintaining retaining such open spaces. A duty is cast upon the Government and the local authorities for the proper preservation and regulation of open spaces. The control has to be exercised not only over public parks and open spaces, but are also exercisable in respect of parks and play fields which are not vested with the Government or local authorities. It is true that the Act contemplates listing of such parks and play fields and the play field in this case, could not have been enlisted in terms of the said Act in view of the attitude of the Society in this case and the general attitude of indifference of local authorities. Reference to the said legislation is made only to emphasise the importance which the Legislature has chosen to bestow on the maintenance of such open spaces either public or private. It is true that the building Society has the power to seek for conversion, and also power in the Registrar and the T.P. Authorities to approve such conversion. But such a power is to be exercised only in public interest and not in violation of the terms and conditions on which lay out plan has been approved. Therefore, the question of conversion would arise only in rare situations of some unforeseen circumstances justifying such conversion and also provided a proper and effective substitute of open space is available.

26. In this case, no such unforeseen or compelling circumstances have been pointed out to erase the very existence of the playground. The unsubstantiated contention that anti social elements were using the area is cited only to cover up the illegal resolution of the Society. The mere existence of a power to convert a common area cannot justify the resolution which lacks bona fides. The circumstances under which the resolution came to be passed in a hasty manner and sale deeds have been executed in favour of the petitioners knowing fully well that such conveyance would be invalid without sanction by the Registrar, and T.P. Authorities, is sufficient to expose utter lack of bona fides on the part of the Society and the petitioners who have acted in collusion. The resolution by the General Body to convert the play ground, is passed on 26.4.1987 and endorsement by the Administrative Committee is given on 17.5.1987 and the sale deeds are executed on 2 7.5.1987. It is pertinent to note that the Society does not take any

steps to get the approval or even apply for the approval in the mean time. This itself is sufficient to prove lack of bona fides. Neither in the affidavit filed in support of the writ petition, nor in the proceedings before the Deputy Registrar under Section 90 of the Cooperative Societies Act is there any reference to the Housing Society having forwarded any application to the authorities for permission. On the other hand, it is only much later after the objections by the residents and they had taken steps questioning the action of the Society, further action was initiated by the Society. Strangely the Society and the petitioners have approached the Deputy Registrar at the same time for certain directions. As pointed out by the learned District Judge in the Civil Miscellaneous Appeals, there is in fact no dispute between the Society and the petitioning members much less on any issue touching the constitution or the business of the society so as to invoke Section 90, nor the Deputy Registrar has any power to direct his own Registrar or the T.P. Authorities to grant sanction. He can only adjudicate as to whether the action of the Society or the members are justified and if not justified hold that the action of the society cannot be sustained. He cannot issue directions to the Registrar or the other local authorities. The collusion between the Society and the petitioners, is obvious from the manner they had approached the Deputy Registrar simultaneously. A.R.C.No.198/94-95 is filed by the Society to cancel the gift deed executed by the Narpani Mandram while A.R.C.Nos.199 and 200/94-95 are filed by the petitioners for direction to the Society to obtain approval. It is rather unfortunate that the Deputy Registrar readily obliges without caring to see whether the action of the Society and the petitioners are legal and valid. He also adjudicates the legality or otherwise of the action of the Society and holds that there is nothing wrong in the decision taken by the Society and also the sale of the land in favour of the petitioners inspite of the fact that their action is totally unsustainable. The Deputy Registrar has absolutely no jurisdiction to decide as to whether the conversion as sought for by the petitioners is permissible or not in terms of regulations relating to the approval of the lay out. The issue is purely for the Municipal and the T.P. Authorities to consider whether the conversion of the playground was legal and permissible. He also readily accepts the resolution of the Society as regards the so-called alternate site which is again a matter for the other authorities. Apart from the fact that he has no jurisdiction to consider the issue, he has also failed to give due consideration to the disadvantages of the location of the alternate site and ignoring the existence of the High-Tension power line and Transformer which render it unfit to be used as a play ground. It is true that he has observed that the sale will take effect only after the due approval of the application for conversion, but he has given findings and made observations upholding the resolution which is not only beyond his jurisdiction, but also totally against the interests of the public. He has also not considered that the sale deeds executed in favour of the petitioners without prior approval from the competent authorities cannot bind the other residents who are entitled to object.

27. I have also perused the plan and considered the location of the site in controversy (A-Schedule) which is sought to be converted into house site and also the site which is allegedly available as an alternate site (B-Schedule). The existing playground is situated well within the Colony at a central area of the colony and surrounded by houses facing a 30 Feet Road

inside the colony and is thus located in a very safe place for the children. On the contrary the site which is suggested as alternate open space is abutting the main road. It is also prohibited for putting up any building. It is further seen that the High Tension power line is running across the land and a Transformer is also located. Therefore, the alternate land is not suitable for the children to use as play ground.

28. In the above circumstances, I am inclined to hold that the entire exercise on the part of the Society to convert the playground as house site is totally illegal, collusive and detrimental to the interests of the Colony people. Hence, the prayer in the writ petition for directing the local authorities to grant approval cannot be accepted. It is pertinent to note that the Municipality has also filed a counter positively stating that the area which has been shown as open area in the approved lay out, cannot be converted into a house site.

29. For the same reasons, I do not find any reasons to interfere with the well considered reasonings of the learned District Judge in C.M.A.No.153 of 1995. After analysing the facts, the learned District Judge has positively held that the conversion sought for was not valid. He has also rightly recorded a finding that the plaintiff and the Society have colluded together and have passed the resolution and conveyed the property even before the resolution was considered and approved by the appropriate authorities and plaintiff/petitioners have purchased the property and such actions amount to high handedness.

30. In the result, I do not find any ground to interfere with the findings thus rendered in the Civil Miscellaneous Appeals by the learned District Judge. There are also no grounds to sustain the prayer in the writ petition for the reasons stated above. It is also made clear that it is open to the petitioners to seek for the return of the sale consideration paid by

them to the Society and on receipt of any such request from the petitioners, the Society shall pay back the amount received from thems forthwith without any delay.

31. In the result, there are no merits in both the writ petition as well as in the Civil Revision Petition and both are dismissed. No costs.

Index: Yes
Internet : Yes

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To
1. The Director of Town and
Country Planning,
Anna Salai,
Madras - 600 002,

2. The Commissioner,
Corporation of Coimbatore,
Coimbatore.

3. The Secretary,
Coimbatore Taluk Co-operative
Housing Society Ltd. (South),
Sowripalayam Colony,
Coimbatore.